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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions of the	)	Phase II
Telecommunications Act of 1996	)	

PETITION FOR CLARIFICATION OR RECONSIDERATION

BellSouth Corporation and BellSouth Telecommunications, Inc., by counsel, hereby seeks reconsideration and clarification of certain provisions of the Commission's Second Report and Order and Memorandum Opinion and Order in this proceeding (Second Order).[1]

I. THE COMMISSION SHOULD CLARIFY THAT WAIVERS WILL BE HONORED OR GRANTED WITH RESPECT TO A LOCAL EXCHANGE CARRIER'S INABILITY TO IMPLEMENT 2-PIC METHODOLOGIES DUE TO EVENTS BEYOND ITS CONTROL.

In its earlier filed Comments, BellSouth stated that it is in the process of implementing intraLATA presubscription in three states, and that two additional states have issued orders which require intraLATA presubscription implementation. Each state order has at its foundation a "2-PIC" methodology (one presubscribed carrier for interLATA traffic and one presubscribed carrier for intraLATA traffic). BellSouth is in the process of purchasing vendor software in order to provide the 2-PIC intraLATA pre-subscription method pursuant to these orders.

BellSouth also noted that there are a limited number of aged switches within its operating territories in which it is not technically feasible to implement a 2-PIC methodology.[2] BellSouth

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[1] Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333 (rel. Aug. 8, 1996).

[2] Specifically, there are 16.

requested that the Commission confirm that if BellSouth were to remove the intraLATA default on these switches, with the result that all intraLATA toll traffic is no longer automatically routed to BellSouth (thus permitting customers to presubscribe to an alternative intraLATA toll carrier), such an arrangement would be consistent with the dialing parity requirements of the 1996 Act.[3] By removing the default to BellSouth, competing local exchange service and toll service providers would be "able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among two or more telecommunications services providers (including the LEC)."[4]

The Commission rejected BellSouth's request, presumably because, in the case of customers currently served by the 16 switches in which it is not technically feasible to implement a 2-PIC methodology, such customers would have to presubscribe to one alternative carrier for all of their toll traffic. BellSouth continues to believe that this (or a modified 2-PIC) arrangement meets both the letter and the spirit of the 1996 Act because carriers could provide their services in such a manner that end user customers, by presubscribing all of their toll traffic to carriers other than BellSouth, would be able to route their telecommunications automatically to the service provider of their designation without the use of any access code.[5] While the 2-PIC method may grant end users an opportunity to choose one carrier for intraLATA toll traffic and a different carrier for interLATA toll traffic, and thus constitute a preferred method of implementing toll dialing parity, it is not the only way to implement dialing parity

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3 47 U.S.C. § 153(15).

4 *Id.*

5 *Id. See also* 47 U.S.C. § 271(e)(2)(a), requiring Bell operating company ("BOC") provision of intraLATA toll dialing parity coincident with BOC exercise of previously granted authority to provide interLATA services under § 271(d).

and is not expressly mandated by the 1996 Act.[6] As a practical matter, competing carriers will seek to provision all of an end user customer's toll traffic, whether it is intra- or interLATA. The Commission should, therefore, reconsider its determination that allowing end user customers to presubscribe all of their toll traffic to alternative carriers is inconsistent with dialing parity requirements of the Act.[7]

BellSouth has advanced its switch replacement dates in order to implement the 2-PIC methodology in reliance on the mandate contained in the Commission's Second Order, and has scheduled implementation as quickly as possible based upon vendor representations of software and hardware availability. BellSouth and NYNEX had each requested that this Commission honor State commission waivers that may be granted to LECs in connection with state intraLATA presubscription requirements. NYNEX specifically noted that:

> in order to facilitate interconnection to network elements or to advance other regulatory objectives such as number portability, certain technological solutions may be required that depart from dialing parity requirements. In such cases waivers should be granted by the Commission, or if granted by a state, given effect by the Commission.[8]

The Commission concluded that the 1996 Act does not authorize the Commission to give effect to state orders that grant BOCs a deferral, waiver or suspension of the BOC's obligation to implement dialing parity.[9]

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[6] 47 U.S.C. § 251(b)(3) requires local exchange carriers ("LECs") to provide dialing parity to competing providers of telephone exchange service (which does not include intraLATA toll calls, 47 U.S.C. § 153(47)) and telephone toll service(which includes both intraLATA and interLATA toll calls, 47 U.S.C. § 153(48).

[7] There would have been no competitive advantage conferred upon BellSouth by removing the intraLATA default. End user customers would have been free to PIC (route their telecommunications automatically without the use of an access code) amongst available telecommunications toll service providers, and to change their PIC as desired. In addition, customers would also have been free to separately route their local (non-toll) telecommunications traffic automatically to competing providers of local exchange service without the use of an access code. This is exactly how dialing parity is defined by Congress in the 1996 Act. 47 U.S.C. §§ 153(15), 251(b)(3), 271(e)(2)(A).

[8] NYNEX Comments at n.7.

[9] Second Order at ¶ 63.

BellSouth respectfully requests that the Commission reconsider this determination and clarify that such waivers can and should be granted if a BOC can demonstrate that (1) it has scheduled implementation of 2-PIC or state prescribed multi-PIC methodology in a given central office by a date certain; and (2) the original implementation date cannot be met due to a cause beyond the control of the BOC. Such waivers may be granted by the State in connection with a previously issued order on intraLATA presubscription, or may be obtained directly from the Commission. Similar waiver authority was specifically delegated to the Chief, Common Carrier Bureau in the Commission's Number Portability Order.[10] Similar authority with respect to 2-PIC intraLATA presubscription should be expressly delegated to the Common Carrier Bureau in this proceeding. BellSouth recommends that the Commission adopt in this proceeding the Number Portability Order's 60 day deadline to file petitions to extend time, burden of proof allocation,[11] and five elements that are required to be set forth in the petition.[12] Such waivers are not waivers of the 1996 Act's dialing parity requirements, but rather the Commission's mandatory 2-PIC methodology requirement (or a state's more stringent multi-PIC option) in the limited circumstances outlined above.

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[10] First Report and Order and Further Notice of Proposed Rulemaking ("Number Portability Order"), CC Docket No. 95-116, FCC 96-286 (rel. Jul. 2, 1996) at ¶ 85.

[11] *Id.* (carriers must show substantial, credible evidence in support of the petition).

[12] These are: (1) the facts that demonstrate why the carrier is unable to meet the original deployment schedule; (2) a detailed explanation of the activities that the carrier has undertaken to meet the implementation schedule prior to requesting an extension of time; (3) an identification of the particular switches for which the extension is request; (4) the time within which the carrier will complete deployment in the affected switches; and (5) a proposed schedule with milestones for meeting the deployment date. *Id.*

II. THE COMMISSION'S DIALING PARITY EVALUATION PROCEDURES ADD AN UNNECESSARY LEVEL OF BUREAUCRACY AND WILL FORESTALL COMPETITION IN INTERLATA MARKETS.

A BOC's obligation to provide dialing parity could not be more clear. The manner in which it fulfills this obligation is described in State orders as well as the Commission's Second Order. Yet the Commission has required BOCs that begin providing in-region, interLATA or in-region, interstate toll service before August 8, 1997 to file an implementation plan with its State commission no later than December 5, 1996. The State commission is under no duty to act on the plan. If a BOC determines that a State commission has elected not to review the dialing parity plan or will not complete its review in time for the BOC to meet its toll dialing parity implementation deadline, the BOC is required to file its plan again, this time with the Commission. The FCC then has an unspecified time in which to release a Public Notice of the BOC's implementation plan. Telecommunications services competitors then have fourteen days in which to file oppositions to the implementation plan. The filing of oppositions triggers another seven days for BOCs to file replies to oppositions containing certain information specified by Commission regulation. The Commission, acting on delegated authority through the Common Carrier Bureau, has 90 days from the date of public notice to act on an opposed plan. Even if the Bureau *fails to act* on the plan with ninety days, "the plan *will not* go into effect pending Bureau action."[13]

Obviously, those who would seek to delay competition in the interLATA markets will, as a matter of course, file oppositions to BOC dialing parity implementation plans. LECs who sought section 214 authorization to provide video dialtone service weathered constant, incessant, and often groundless oppositions lodged by cable television companies and their representative organizations in a

[13] Second Order at B-6 (to be codified at 47 C.F.R. § 51.213(d)(3))(emphasis added).

calculated tactic to delay LEC entry in the video programming services delivery market.[14] In all likelihood, the Commission has here replicated the same dilatory, resource draining process. There is a very real possibility that a contested dialing parity plan would not be resolved until well beyond the date on which a LEC desires to provide in-region, interLATA service. This is patently unreasonable, and completely unnecessary given the clear definition of dialing parity established by the Congress in the 1996 Act as well as the implementation standards established by the Commission in its Second Order. If a carrier is truly aggrieved by any LEC's failure to follow either a state or a Commission directive, it has clearly established remedies at law. The Commission should simply allow BOCs to comply with the requirements of the 1996 Act, the Commission's Second Order and any applicable State requirements without adding an unnecessary layer of regulation.

III. THE COMMISSION SHOULD CLARIFY CROSS BOUNDARY DIALING PARITY ISSUES.

The Commission adopted a rule stating that when a single LATA covers more than one state, the LEC shall use the implementation procedures that each state has approved for the LEC within the state's borders.[15] This will lead to obvious jurisdictional conflicts, as well as delays in approval of implementation plans. BellSouth recommends that the Commission clarify that (1) customers within an implementing state's boundaries, but in an adjoining state's LATA, would not be required to be converted until the adjoining state implemented intraLATA presubscription; and (2) customers located in an implementing state's LATA, but located in an adjoining state, will not be converted until the adjoining state implements intraLATA presubscription.

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[14] In response, Congress specifically eliminated the section 214 certification requirement for common carriers with respect to the establishment or operation of a system for the delivery of video programming. 47 U.S.C. § 571(c).

[15] Second Order at B-3 (to be codified at 47 C.F.R. § 51.209(a)).

IV. THE COMMISSION SHOULD RECONSIDER THE USE OF NET REVENUES AS THE BASIS OF DETERMINING CONTRIBUTIONS TO THE COSTS OF ESTABLISHING NUMBERING ADMINISTRATION.

The Second Order requires telecommunications carriers to subtract from their gross telecommunications revenues their expenditures for all telecommunications services and facilities that have been paid to other telecommunications carriers.[16] This is not competitively neutral in that it would allow resellers of local exchange service to be responsible for only the excess of their retail local revenues over their wholesale payments. In contrast, facilities-based LECs would have to contribute on the basis of their entire retail local revenues. The Commission, therefore, should adopt a retail revenues standard and require that both payments made to other carriers as well as payments received from other carriers be subtracted from gross revenues.[17]

V. THE COMMISSION SHOULD RECONSIDER ITS STATEMENT RELATING TO CENTRAL OFFICE CODE WAREHOUSING.

The Commission should reconsider its statement that "incumbent LECs have an advantage over new entrants when a new code is about to be introduced, because they can warehouse NXXs in the old NPA."[18] The Commission cites to no support in the record for such a sweeping, categorical charge. In fact, the opposite is true. LECs who administer area code relief plans in their temporary capacity as central office code administrators do not do so in a vacuum; relief plans are adopted by industry consensus according to industry approved guidelines subject to oversight by Bellcore in its role as temporary North American Numbering Plan Administrator.[19] In every area code exhaust

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16 Second Order at ¶ 343.

17 *See* Number Portability Order, Comments of Bell Atlantic at 4-7 (Aug. 16, 1996); NYNEX Comments at 7-9 (Aug. 16, 1996); Comments of Pacific Telesis Group at 6 (Aug. 16, 1996).

18 Second Order at ¶ 289.

19 For a description of how the industry works cooperatively through consensus in these situations, see the Reply Comments of Pacific Bell filed in NSD File No. 96-9 (Oct. 1, 1996).

scenario that has occurred in BellSouth's region, BellSouth has undertaken an inventory to determine whether or not codes could be reclaimed. BellSouth has never encountered "warehoused" central office codes. Such "warehousing" is simply hypothetical conjecture which has regrettably been given the Commission's imprimatur without record support.[20]

VI. THE COMMISSION SHOULD CLARIFY ITS NXX RATIONING SCHEME FOR AREA CODE OVERLAYS.

A Commission mandate to provide at least one central office ("NXX") code to all existing authorized carriers could further accelerate numbering plan area ("NPA") exhaust by requiring the assignment of unnecessary codes to existing carriers who already have codes in the exhausting NPA and who may not need a new code at the 90th day prior to implementation of an overlay.[21] This new rule could lead to uncertainty as to whether all conditions for implementation of an overlay have been met until 90 days prior to implementation. It would be too late to change relief plans from an overlay to split if all carriers cannot be assigned an NXX a the 90th day prior to implementation. A change in the NPA relief plan 90 days before implementation would be costly and confusing for all involved carriers as well as for all end users covered by the relief plan. If the Commission insists on maintaining an NXX provisioning requirement triggered by the 90th day prior to exhaust, BellSouth suggests that NXXs only be assigned to authorized carriers who do not already have working NXXs 90 days prior to overlay implementation. In this way, new entrants would not be deprived of an opportunity to offer telephone numbers within the exhausting numbering plan area while all other carriers will have had an

[20] Already one carrier has relied on this unsupported statement to support the equally unsupported proposition that "RBOCs have long warehoused numbers for future use, as the FCC recognized in the [Second Order]. . ."; Reply Comments, Teleport Communications Group Inc., NSD File No. 96-9 (Oct. 1, 1996) at 17-18; and to refute BellSouth's observation assertion that number rationing and

opportunity to obtain necessary NXXs pursuant to industry guidelines as well as the non-discriminatory obligations imposed by the Second Order.

VII. THE COMMISSION SHOULD CLARIFY THAT CENTRAL OFFICE CODE MAINTENANCE COSTS CAN BE RECOVERED FROM OTHER CARRIERS ON A NONDISCRIMINATORY BASIS

The Commission has determined that charging different "code opening" fees for different providers or categories of providers of any telecommunications service is illegal; and that any incumbent LEC charging competing carriers fees for assignment of central office codes may only do so if the incumbent LEC charges one uniform fee for all carriers, including itself or its affiliate. BellSouth does not plan to charge "code opening fees," but requests that the Commission clarify that this determination is not meant to preclude recovery of ongoing costs incurred by LECs on behalf of their customers for ongoing maintenance of numbering information in the Routing Data Base System and Bellcore Rating Input Database System, as well as for Administrative Operating Company Number responsibilities assumed by LECs at the request of other carriers.

CONCLUSION

The Commission should reconsider and clarify those portions of its Second Order as suggested herein.

Respectfully submitted,

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